

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4974 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARATSINH K DAMOR

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

None present for Respondents No. 1, 2

MR GIRISH PATEL for Respondents No. 3 to 9

MR ANAND for Respondents No. 3, 4 & 5

None present other respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/07/97

ORAL JUDGEMENT

1. Heard the learned counsel for the parties.

2. The petitioner, an Officer of the Sales Tax Department of the Government of Gujarat, filed this special civil application before this court and challenge

has been made to the order annexure 'C' under which the respondents No.3 and 4 have been given the promotion to the post of Sales Tax Officer, Class-I.

3. This petition has been admitted by this Court on 4th January, 1985 and this Court has granted the interim mandatory order to promote the petitioner to the post of Sales Tax Officer, Class-I. The respondents have given the promotion to the post of Sales Tax Officer, Class-I in pursuance of this Court's order on 31st January, 1985 and the petitioner then started working on the post of Sales Tax Officer, Class-I. During the pendency of this special civil application, the petitioner has also been promoted to the next higher post of Assistant Commissioner of Sales Tax.

4. In the month of February, 1983, the Selection Committee met to select the eligible Sales Tax Officer, Class-II for promotion to the next higher post of Sales Tax Officer, Class-I. As many as 14 posts of S.T. were available as per the roster. The petitioner was the first S.T. candidate. The petitioner was also eligible for promotion to the next higher post of Sales Tax Officer, Class-I. The Selection Committee has found the petitioner suitable for promotion and his name has been placed in the select list. That select list which had been prepared in the month of February, 1983 was not acted upon for a considerable long time. On 18th April, 1984, the select list has been acted upon and five Officers therefrom were promoted to the post of Sales Tax Officer, Class-I. All these five Officers were of General category. So none of the S.T. candidate has been given promotion though 14 posts were available for them. So when the respondents No.3 and 4 were given the promotion, the petitioner filed this special civil application.

5. The respondents have come up with a case in the reply that the name of the respondents No.3 and 4 were included in the select list prepared by the Selection Committee which met on 24th January 1984. The earlier select list prepared on 25th February, 1983 was modified and their names have been included and names of two persons were dropped which includes the name of the petitioner. It has further been stated that in the seniority list prepared on 25th March, 1983 of the Sales Tax Officer, Class-II, the petitioner is below these two aforesaid Officers. So the petitioner was not given the promotion.

6. Further grievance of the petitioner is that he

was eligible for promotion to the next higher post, that is of Assistant Commissioner of Sales Tax on 16th May, 1989, but he was not given the promotion and which promotion was given to him on 17th June, 1996. So by amending the special civil application, the prayer has been made for giving him the deemed date of promotion on the post of Assistant Commissioner of Sales Tax also.

7. The petitioner and respondents No.3 and 4 have already been promoted to the next higher post, but still the grievance survives as what they stated that their seniority on the post of Assistant Commissioner may be relevant for the purpose of further promotions.

8. The year-wise determination of vacancies has to be made for making the promotion to the next higher post and the eligibility of the Officers for promotion to the next higher post has to be considered with reference to the date of determination of vacancies or as per the relevant service rules. It is really sorry state of affairs that the respondent-State has not given out the relevant service rules as well as the year of vacancies of the Sales Tax Officer, Class-I for which the meeting of the Selection Committee was held in February, 1983. The eligibility has to be considered with reference to the date and the vacancies have to be filled in year-wise. It is not in dispute that in February, 1983, the respondents No.3 and 4 were not eligible for promotion, and as such, their cases could not have been considered for promotion. The petitioner was eligible and he was also a S.T. candidate. So his case was considered and he was also found suitable. So irrespective of the fact whether the petitioner was junior or senior and the fact that subsequently the seniority list has been modified, the eligibility is an important thing and to be considered with respect to a date and in case the senior was ineligible, I fail to see how he could have been considered for promotion.

9. There is yet another aspect that even if the seniority list is modified and in the next D.P.C. the respondents No.3 and 4 have been found suitable for promotion then too when there were 14 posts of S.T., how the name of petitioner has been dropped. The petitioner's name could have been dropped only in case the vacancy would not have been there, but that is not the case of the respondents. However, in view of the fact that the petitioner as well as the respondents No.3 and 4 have been given the promotion to the post of Sales Tax Officer as well as to the next higher post of Assistant Commissioner of Sales Tax, I consider it to be appropriate as well as the interest of justice will be

met in case this special civil application is disposed of with the direction to the respondents to consider the case in the light of relevant service rules as well as availability of the vacancies and the petitioner's claim for promotion on the post of Sales Tax Officer, Class-I be considered with reference to the date on which the vacancy was available or even if it is considered that the respondents No.3 and 4 are senior to him and they have subsequently acquired eligibility then to give the promotion to the petitioner from the date on which they have been promoted, however subject to the availability of the post. The petitioner's deemed date of promotion to the post of Assistant Commissioner may also be accordingly considered. This exercise has to be undertaken by the respondents within a period of three months from the date of receipt of certified copy of this order and in case the claim of the petitioner is accepted then he shall be entitled for all the consequential benefits which follow therefrom. The special civil application and Rule therein stand disposed of in the aforesaid terms with no order as to costs.
